



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 16, 2023

IN THE MATTER OF:

Appeal Board No. 626893

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed November 25, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a community associate for a company that provided workspace for other businesses for over two years until July 1, 2022. She was scheduled to work from 10:00 am through 5:30 pm. The employer's policy, of which the claimant was aware, provided that employees must call within an hour of their shift if absent, and that the first instance of failing to call may result in discharge. On November 16, 2021, she received a written warning for excessive tardiness and that she needed to improve or face

discharge. On April 7, 2022, she did not arrive to her work location until 10:16 am but clocked-in indicating that she had arrived at 9:56 am. On June 9, she was absent from work because her son had school issues. She did not notify her supervisor that she would be absent. Following investigations into these incidents, on July 1, the employer discharged the claimant because she falsified her time record on April 7 and failed to call in her absence on June 9.

OPINION: The credible evidence establishes that the claimant lost her employment because she falsified her time record on April 7 and failed to call in her absence on June 9. We disagree with the Judge's opinion that only the June 9 incident was the final incident. Both of the employer's witnesses testified that April 7 was also part of the final incident. Their testimony was corroborated by the discharge letter. Further, as the delay in discharge was due to investigations into the incidents, they are excusable (See Matter of Weinstein, 161 AD3d 1410 [3d Dept 2018]; Matter of Cappello, 113 AD3d 952 [3d Dept 2014]).

The claimant admitted that she had falsely indicated in her April 7 time record that she had arrived prior to her shift. She also admitted that she had "had no excuse" for failing to notify her supervisor about her June 9 absence from work. As she was aware of the employer's policy requiring notification of absences, she knew or should have known that her behavior could jeopardize her employment. Further, no prior warning is needed where an employee's falsification of records is deliberate. In this regard, we note that she received a written warning for excessive tardiness. Accordingly, we conclude that the claimant's behavior on April 7 and June 9 constitutes misconduct and that her employment ended under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is sustained, effective July 2, 2022.

The initial determination, holding the claimant eligible to receive benefits, is overruled

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER